

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.8386 OF 2021

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail to the petitioner/A.2 in the event of her arrest in connection with Crime No.594 of 2021 of Shadnagar Police Station, Ranga Reddy District, registered for the offences punishable under Sections 498-A and 306 IPC and Sections 3 and 4 of Dowry Prohibition Act.

2. The case of prosecution is that a report was lodged by the *de facto* complainant stating that on 23.07.2021, her sister Sharavath Renukabai was given in marriage to A1 and they led their marital life happily for one year. Thereafter, A.1 and the petitioner-A.2 harassing the said Renukabai mentally and physically for demanding additional dowry. On 21.07.2021, her sister consumed acid and while undergoing treatment, she died. Basing on the said report, the present crime is registered.

3. Heard Sri P.Nagendra Reddy, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that even as per the complaint, the deceased Renukabai and A.1 were led their marital life happily. He further submits that there is no allegation of demanding of additional dowry and at the instigation of this petitioner, the deceased committed suicide. He also submits that the alleged act of the petitioner

does not constitute the offences as alleged in the complaint. While relying on the judgment of the Hon'ble Supreme Court in **Rajesh Vs. State of Haryana**¹, he submits that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'. The word uttered in a fit of anger or omission without any intention cannot be terms as instigation. Therefore, he submits that even if at all, all the allegations made in the complaint are taken into consideration, they did not constitute any of the offences punishable under Sections 498-A and 306 IPC and Sections 3 and 4 of Dowry Prohibition Act. He submits that the petitioner is aged about 60 years and being a lady, her case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits earlier, the petitioner moved Crl.P.No.7167 of 2021 and the same was dismissed by order dated 30.09.2021, wherein, learned judge has observed that it is not a fit case to grant bail. He submits that as there are no changed circumstances, the second bail application is not maintainable. Hence, she is not entitled for pre-arrest bail.

6. It is apt to have a look at Section 306 I.P.C. which reads thus:

“**306.** Abetment of suicide - if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term

¹ (2020) 15 Supreme Court Cases 359

which may extend to ten years, and shall also be liable to fine."

7. An abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. **(Criminal Application (Apl) No.547 of 2017 the High Court of Judicature at Bombay, Nagpur Bench, Nagpur).**

8. Before holding an accused guilty of an offence under Section 306 of IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative, but to commit suicide. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable". **(M.Mohan vs. State of Tamilnadu²).**

9. Thus, the said provision makes it clear that to constitute an offence under Section 306 IPC, the prosecution has to establish: (i) that a person

² 2011 (3) SCC 626

committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime.

10. Taking into consideration of the allegations made in the complaint and also the judgment of the Supreme Court in Rajesh supra, wherein it was held that ingredients of Section 107 IPC have to be proved to constitute offence under Section 306 IPC, this Court deems it fit to grant pre-arrest bail to the petitioner-A2.

11. Accordingly, this Criminal Petition is allowed and the petitioner/A.2 shall be released on bail in the event of her arrest in connection with Crime No.594 of 2021 of Shadnagar Police Station, Ranga Reddy District, on condition of executing a self bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the Station House Officer, Shadnagar Police Station, Ranga Reddy District.

Consequently, miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :23.11.2021

kdI